

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR: Mihai Florin Ionescu

SERIAL NO.: 10/813,888

FILING DATE: March 31, 2004

U.S. PATENT NO.: 7,499,958

ISSUED DATE: March 3, 2009

TITLE: Systems and Methods of Replicating all or Part of a Data Store

EXAMINER: Michael Le

GROUP ART UNIT: 2163

ATTY. DKT. NO.: 24207-10109

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Dated: April 28, 2009 By: /Nikhil Iyengar/
Nikhil Iyengar, Reg. No. 60,910

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(d)

SIR:

This letter is to request reconsideration of the Patent Term Adjustment (PTA) under 37 C.F.R. § 1.705(d). Specifically, in view of *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D. D.C. 2008), the PTA calculation does not account for the total period of delay under Rules 702(a) and 702(b). The patent for the application issued March 3, 2009 as U.S. Patent 7,499,958 and the PTA printed on the face of the patent is 505 days. The PTA calculation on the face of the patent is incorrect and, therefore, Applicants respectfully submit this request within two months of the issue date of the patent. The \$200 fee required by Rule 18(e) is authorized herewith. The calculation of the corrected PTA and the bases for the adjustment are provided below.

Calculation of Periods for Patent Term Adjustment

Under Rule 703(a)

The PTO determined it incurred 505 days of delay under Rule 703(a) for the period beginning 14 months from the filing date (June 1, 2005) until the mailing of a Non-Final Rejection on October 18, 2006. Applicant calculates the relevant period to be from June 1, 2005 to October 18, 2006, and agrees with the determination that the PTO incurred 505 days delay under 703(a).

Under Rule 703(b)

The application was filed on March 31, 2004, and the period exceeding three years after the date on which the application was filed begins on April 1, 2007 (three years from the day after the filing date). Applicant calculates the relevant period to be from April 1, 2007 to March 17, 2008 (the date a first Request for Continued Examination was filed), or 352 days.

Reduction Under Rule 704

The PTO determined no Applicant delays. Applicant does not dispute the PTO determination of no Applicant delays.

Request for Patent Term Adjustment in View of *Wyeth v. Dudas*

On the face of U.S. Patent 7,499,958, the PTO calculated that Applicant is entitled to 505 days of PTO as the difference between the delay under Rule 702(a) and the Applicant delay under Rule 704. In view of *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D. D.C. 2008) and the plain reading of the Patent Term Adjustment statute (35 U.S.C. § 154), Applicant submits that the Applicant is entitled to the sum of the delays under Rules 703(a) and 703(b) minus the days of Applicant delay, currently calculated to be 857 days ((505 + 352) - 0 = 857 days). According to the Court's interpretation, the statute does not permit the PTO to excuse one source of delay simply because it caused another source of delay by interpreting delays under Rule 703(a) and Rule 703(b) to be overlapping when such delays do not occur on the same calendar days. The delays under Rules 703(a) and 703(b) in this case are non-overlapping because the PTO delay from June 1, 2005 to October 18, 2006 (delay under Rule 703(a)) does not overlap with the PTO delay from April 1, 2007 to March 17, 2008 (delay under Rule 703(b)). Therefore, Applicant

requests a PTA calculation based on the delays under Rules 703(a) and 703(b) minus the days of Applicant delay, yielding a calculation of $(505 + 352) - 0 = 857$ days.

No Terminal Disclaimer

This application is not subject to a terminal disclaimer.

AUTHORIZATION

The Commissioner is hereby authorized to charge the fee set forth in 37 C.F.R. § 1.18(e) to Deposit Account No. 19-2555. The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this communication, or credit any overpayment, to Deposit Account No. 19-2555.

Respectfully Submitted,
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Date: April 28, 2009

By: /Nikhil Iyengar/

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